KELLEY DRYE & WARREN LLP
A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400
3050 K STREET, NW
WASHINGTON, D.C. 20007-5108

(202) 342-8400

NEW YORK, NY
CHICAGO, IL
STAMFORD, CT
PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICES
MUMBAI, INDIA

FACSIMILE
(202) 342-8451
www.kelleydrye.com

DIRECT LINE: (202) 342-8531
EMAIL: gmorelli@kelleydrye.com

November 5, 2010

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 - 12th Street, SW
Washington, DC 20554

Re: Notice of *Ex Parte* Presentation – WC Docket 07-135, CC Docket 01-92

Dear Ms. Dortch:

On November 4, 2010, Thomas Cohen and the undersigned, counsel to Tekstar Communications, Inc., met with Bradley Gillen, Legal Advisor to Commissioner Meredith Baker. The following points were discussed at the meeting: (1) Tekstar, a rural competitive local exchange carrier ("CLEC"), has entered into market agreements with interexchange carriers ("IXCs") covering most of its interstate switched access traffic at rates far below the benchmark rate Tekstar is entitled to charge as a rural CLEC; (2) on September 16th, Tekstar filed a new switched access tariff that includes rates reflecting these market agreements; (3) because a market has developed for IXCs and CLECs to arrive at mutually agreeable terminating rates for high volume switched access traffic, no further regulation is required; and (4), even if regulation were needed, the IXCs' proposal (*see* US Telecom *ex parte* of August 31, 2010 in WC Docket No. 07-135) to amend the Commission's rate benchmarking rules for CLECs operating in rural areas is deeply flawed and should not be adopted.

Tekstar, which has operated in Minnesota since 1997, is a rural CLEC. As such, it is entitled under the Commission's rules to benchmark its switched access rates either to the rates of the competing rural incumbent local exchange carrier ("ILEC") or to the NECA rate if it competes with a non-rural ILEC. Since Tekstar competes with a non-rural ILEC, it is entitled under the current rules to use the highest NECA band as a benchmark for its interstate switched access rates. Accordingly, its tariffed terminating switched access traffic rate is approximately $0.043 per minute of use ("MOU").

Tekstar submits that its experience in dealing with IXCs has not been dissimilar from other CLECs with high traffic volumes under current conditions: a CLEC must either enter into an agreement at rates below the benchmark they are entitled to charge to ensure receipt of payment, or the CLEC must forego collecting access revenues in the interim, take substantial time (many years), and resources to litigate, and face an uncertain outcome. Beginning in late 2007, Tekstar began to negotiate and enter into agreements with IXCs to establish rates for the termination of interstate switched access traffic that are substantially below the benchmark rate that Tekstar is entitled to charge as a rural CLEC. Today, the vast majority of Tekstar's interstate access traffic is covered by agreements with IXCs, and the rates for such traffic have continued to decline. (In general, Tekstar has been unable to collect invoiced fees for terminating interstate switched access traffic from IXCs with whom it does not have an agreement.) While IXCs and Tekstar have entered into numerous agreements, to lower transaction costs for both Tekstar and IXCs that are not under contract with it, on September 16, 2010, Tekstar filed a new interstate tariff slated to go into effect October 1, 2010, with the following switched access rates which reflect its experience with market negotiations and contains rates that IXCs not under contract can and must abide by:

> A composite rate per each minute of use ("MOU") generated in the month of service by Interexchange Customer will be applied as follows:

Per MOUs > 0 and ≤ 5.0 Million	$ 0.0215
Per MOUs > than 5.0 Million and ≤ 25 Million	$ 0.014
Per MOUs > than 25 Million and ≤ 100 Million	$ 0.008
Per MOUs > 100 Million	$ 0.0055

Accordingly, the Commission does not need to adopt new regulations for rural CLECs with high traffic volumes. Moreover, even if the Commission decided that new regulations were necessary, it should reject the proposal set forth by the IXCs seeking new regulation of rural CLECs. This proposal is deeply flawed in numerous aspects. First, the US Telecom proposal is arbitrary, reflecting neither market conditions nor actual cost causation associated with switched access services. Second, its terminology and requirements are vague and thus will set in motion a new round of litigation. Third, its certification, reporting, and tariffing obligations are excessive and will unduly burden rural CLECs. Moreover, the proposed rules would potentially result in disparate obligations being imposed for up to a year on CLECs with similar access traffic volumes. Finally, the USTelecom proposal seeks to limit the legitimate practice of revenue sharing, when, as indicated by the market agreements, the only issue in dispute is the terminating access rate.

This notice of *ex parte* presentation is being filed as required by the Commission's Rules. We request that this letter, which is being filed electronically, be placed in the file for the above-captioned proceeding.

Respectfully submitted,

Genevieve Morelli

Genevieve Morelli

Counsel for Tekstar Communications, Inc.

cc: Bradley Gillen